

REMARKS/ARGUMENT

Claims 1-33 are pending. Claims 1, 10, 16, 17, 18, 19, 26 and 30 are independent. The Examiner objected to certain drawings figures at page 3 of the Office Action. A substitute set of drawings is submitted herewith to address those issues, without adding new matter. Withdrawal of the objections is requested. The specification has been amended in accordance with one of the required drawings changes. No new matter has been added.

The Examiner has requested an explanation regarding the Examiner's contention that the phrase "substantially the same price," utilized at page 8 of the previous response, alters the meaning of "same price" in claim 11. Applicants do not understand this request. Claim 11 does not anywhere recite the term "same price." The closest thing in claim 11 is "same amount." However, claim 11 uses that term in connection with credit limits. In particular, it recites that the means for adjusting the counterparty credit limits adjusts the assigned credit and the utilized credit by the same amount. In the Amendment, at the top of page 8, what was being referred to was the second order being effected at substantially the same price regardless of the credit limits between the first and second traders. For the foregoing reasons, it is not clear what the objection is, since the word "same" is being used in different contexts in the two locations. It is requested that the objection be clarified.

In the Office Action, all of the claims were once again rejected under 35 U.S.C. 103 over Togher et al. in view of official notice. The Examiner's rejection on these grounds is respectfully traversed.

In previous responses, Applicants have pointed out with particularity features of the independent claims that are neither taught nor suggested in Togher et al., the primary reference. In response to these arguments, which are maintained and incorporated herein by reference, the two most recent Office Action have relied upon official notice to supply

the features not shown in Togher et al. As will be set forth below, the rejections fail to set forth a prima facie case of obviousness.

It has been conceded in the recent Office Actions that Togher et al. does not teach an anonymous trading system that includes either: (a) a means for offering to the identified counterparty a further trade at the same price as the executed deal; or (b) a means for executing a further trade that is irrespective of whether or not the further trade exceeds one or both of the credit limits assigned by each of the parties to the trade to the other in place when said executed deal took place. The Office Action relied upon official notice that each of these features is old and well known in the art.

First, even if the taking of the official notice were deemed proper in this case, it appears what is being taken notice of is really based on the definitions in the dictionary excerpts included with the previous Office Action. Rather than continue the argument over the propriety of the official notice, Applicants will simply treat the cited dictionaries as the art being cited by the Examiner.

In particular, a crossed trade (or sale) is defined in one of the cited dictionaries as a practice in which buy and sell orders are offset without recording the trade on an exchange. However, it is not understood how this teaching, even if it were proper to add it to the Togher reference, would meet the features of the independent claims.

That is, as was pointed out in the previous response, even if it were deemed, for the purposes of argument, to be true that further trades are well known *in the abstract* (and Applicants make no such admission), that is not enough to support a rejection of claim 1. The recited features involve the system itself providing means for offering and means for executing the further trade *in the anonymous trading system*. That is, in claim 1, the anonymous trading system itself offers the follow up trade. This is quite different from the types of trades that may be effected in a “crossed sale” in the context of an exchange.

In that type of “crossed sale” trade, the exchange, according to the dictionary definition, and the related definitions of “cross order” and “cross purchase”, frowns upon

the outside trade as being a “manipulative practice”. Thus, the cited prior art dictionary definitions teach away from the *exchange* providing the opportunity for the further trade, since such trades are frowned upon by the exchanges, and would therefore teach away from the anonymous trading system providing such trades.

Further, in view of the fact that anonymous trading systems are designed to keep the identities of trading partners anonymous, the teachings of Togher et al. would have *dissuaded* one of ordinary skill in the art from *designing the system itself to provide* the recited further trade by the means for identifying, the means for offering, and the means for executing, since such features of claim 1 would be seen as going against the purpose of an *anonymous* trading system.

The fact, evidenced by the dictionary definitions cited in the Office Action, that unscrupulous traders in exchanges may go *outside the rules of the exchange* and engage in unrecorded trades, when combined with teaching of the desirability of anonymity in Togher et al., would lead one of ordinary skill in the art *away* from creating the system of claim 1. In claim 1, the system itself is involved in *encouraging* the further trade, going against the teachings of both Togher (i.e., anonymity) and the dictionary definition of crossed sales (i.e., that such activity is a “manipulative practice”). For at least the foregoing reasons, it is believed that the art cited in the Office Action actually teaches away from the recitations of claim 1 and that therefore there would have been no motivation to combine them in any event. For at least this additional reason, claim 1 is believed patentable over the art identified in the Office Action.

Claims 2-9 and 14 depend from claim 1 and include all the limitations found therein. These claims recite additional limitations which, in combination with the limitations of claim 1, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be in condition for allowance.

Among the limitations of independent claim 10, which are neither disclosed nor suggested in the art of record are:

“the deal execution means further identifying the counterparties to each other on completion of the deal; and

means for permitting a party to an executed deal to provide a non-anonymous offer or request for a further deal with the for a counterparty to the executed deal at the same price, the means for permitting including means for adjusting the counterparties credit limits with one another by an amount equal to the value of the deal.”

As was pointed out in the previous response, there is no disclosure in Togher et al. of any structure in the anonymous trading system of that patent for permitting a party to an executed deal to provide a *non-anonymous offer or request* for a further deal with a counterparty to the executed deal at the same price as required by claim 10. This was conceded in the current Office Action.

However, once again, the Examiner relied upon official notice and the dictionary definition of crossed sales. As with claim 1, the Applicants will address the dictionary definition as if it were simply a cited reference, without addressing the use of official notice.

For the reasons developed above in connection with independent claim 1, even if it were deemed, for the purposes of argument, that non-anonymous offers are known, the teachings of Togher et al. and the dictionary definition of crossed sales cited by the Examiner would have *dissuaded* one of ordinary skill in the art from designing a system that provides a further trade by the deal execution means further identifying the counterparties to each other on completion of the deal and the means for permitting a party to an executed deal to provide a non-anonymous offer or request for a further deal with the for a counterparty to the executed deal at the same price, the means for permitting including means for adjusting the counterparties credit limits with one another by an amount equal to the value of the deal. Both of the references teach away from various features of claim 10. For at least this reason, no prima facie case of obviousness has been set forth in the Office Action in connection with claim 10.

Claims 11-13 and 15 depend from claim 10 and include all the limitations found therein. These claims recite additional limitations which, in combination with the

limitations of claim 10, are neither disclosed nor suggested in the art of record and are also believed to be in condition for allowance.

Among the limitations of claim 16, which are neither disclosed nor suggested in Togher et al. are:

“the broker terminal further effectuates a first order between a first and second trader, notifies the first and second trader of the respective identities of their counterparties, and, thereafter, when requested by at least one of the first and second traders, the broker terminal effectuates a second order between the first and second traders at substantially the same price as the first order regardless of the credit limits between the first and second traders.”

Independent claim 16 is believed patentable for reasons substantially similar to those discussed above in connection with claims 1 and 10.

Claims 20-22 depend from claim 16 and include all the limitations found therein. These claims recite additional limitations which, in combination with the limitations of claim 16, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be in condition for allowance.

Independent claims 17, 18, 26 and 30, as well as the claims dependent thereon, are believed patentable for reasons substantially similar to those delineated above in connection with independent claims 1, 10 and 16.

Among the limitations of claim 19, which are neither disclosed nor suggested in the art of record, are:

“performing a second trade between the first and second trader through the anonymous trading system without regard to the trading limits.”

As was pointed out in the previous response, Togher et al. performs a single trade, not two separate trades, and certainly does not disclose or suggest the desirability of

first carrying out a first trade based on trading limits and then performing a second trade without regard to the trading limits. The dictionary definition of crossed trades (or sales) teaches away from a system that allows such trades, since exchanges conventionally view them as “manipulative.”

Claim 19 recites a method that includes *both* performing a second trade between the first and second trader *through the anonymous trading system* without regard to the trading limits and performing a first trade between the first and second trader based on bilateral credit limits. As discussed above, both Togher et al. and the cited dictionary definition teach away from providing or using an anonymous trading system in this manner.

For at least the above, reasons, claim 19 is believed allowable.

Although the issue of the propriety of the official notice is essentially moot in view of the discussion above, Applicants maintain the position that the use of official notice is improper as it relates to the state of the art. Whether something is known in the art is *not* the type of thing that may be officially noticed.

“The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and *are not amenable to the taking of such notice.*” In re Eynde, 480 F2d 1364,1370 (CCPA 1973) (emphasis supplied). This statement is not limited to the specific facts of the case in which it originally appeared. Administrative agencies, such as the Patent and Trademark Office, must provide evidence to support any and all administrative decisions. The taking of official notice of the state of the art, which is something that is always subject to the possibility of rational disagreement, is always improper.

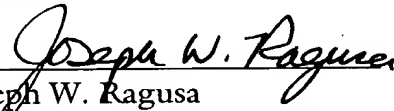
However, as discussed above, Applicants have responded to the rejection based upon Togher et al., in view of the dictionary definition of “crossed trades.” For at least the reasons discussed above, even when combined, those references do not teach all of the features of the claims. In fact, since each reference teaches away from the noteworthy

features of the independent claims discussed above, there would have been no motivation to combine them in any event. For at least these reasons, the independent claims, and the claims dependent thereon, are believed patentable over the cited references.

In view of the arguments presented above and in previous papers, reconsideration and allowance of the application are respectfully solicited.

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Respectfully submitted,

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